IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY NINETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT: **THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY**

WRIT PETITION NO : 6423 of 1993

Between:

Kolluri Krishnamurthy S/o.Late Pitchaiah.Managing Partner of M/s.Kolluri Krishnamurty and Venkata Subba Rao,
R/o.D.No.5-342,Stonehousepet,Nellore Town and
Nellore Dist.

..... PETITIONER

AND

1 The Addl.Commissioner Endowments Dept
A.P.Tilak Road, Hyderabad.
2 The Deputy Commissioner, Endowments Dept
Guntur.
3 The Asst.Commissioner, Endowments Dept
Nellore.
4 Kamisetty Sundara Ramaiah Setty Choultry ,rep.by its Hereditary Trustee
Sri Kamisetty Adi Seshaiah Setty S/o.K.Sundara Rama Setty
Nawabpet P.O,Nellore Mandal and Nellore dist.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly in the nature of writ of Certiorari calling for the records in R.P.No.37 of 91 from Respondent No.1 and O.A.No. 138/89, from Respondent No.2 and quash all the proceedings as illegal, arbitrary and unconstitutional.

Counsel for the Petitioner: MR.E.AJAY KUMAR

Counsel for the Respondent No.1 to 3: GP FOR ENDOWMENTS

Counsel for the Respondent No.4:MR.K.DURGA PRASAD

The Court made the following :

ORDER:

This writ petition is directed against the orders dated 6-4-1993 in R.P.No.37 of 1991 on the file of the 1st respondent-Additional Commissioner,Endowments Department, A.P., whereunder and whereby the Additional Commissioner, confirmed the orders passed by the 2nd respondent - Deputy Commissioner, Endowments declaring the petitioner to be an encroacher on the suit schedule property.

That according to the writ petitioner, the premises in question was let out to him on a monthly rent of Rs.190/- on 17-3-1966 by the 4th respondent herein and that there was a written agreement between the parties. The rent payable was subsequently enhanced to Rs.400/- per month. According to the petitioner, he was paying the rent regularly to the trustee of the 4th respondent-Choultry.

In the counter affidavit filed by the 4th respondent –Choultry, it was inter-alia stated that the lease deed was created without specifying any lease period; the building is in dilapidated condition; that if public auction is conducted for lease, the Choultry may get more than Rs.50,000/- as donation for construction of shopping room and it would fetch a rent Rs.1500/- per month.

The Deputy Commissioner as well as the Additional Commissioner concurrently found that the so called lease deed alleged to have been executed by the 4th respondent Choultry is not an approved lease by the competent authority. The alleged lease deed dated 17-3-1966 is unregistered one. The 4th respondent choultry is not competent to grant lease in the absence of approval from the competent authority. Though the authorities also found that the petitioner did not pay the rents regularly and no tangible proof in that regard has been produced substantially, some amounts were spent for repairing the premises by the petitioner.

The authorities found that the petitioner miserably failed to establish the execution of lease deed by the 4th respondent Choultry. It was also found that the so-called unregistered lease deed does not convey any right and interest in the schedule property. The petitioner was accordingly declared to be the encroacher.

The concurrent findings of fact recorded by the authorities below in my considered opinion do not suffer from any legal infirmities or jurisdictional errors. Upon appreciation of the evidence and the material available on record, the authorities below concurrently found that the lease deed alleged to have been executed by the 4th respondent-Choultry in favour of the petitioner is inoperative. The petitioner miserably failed to establish execution of the lease deed.

It is under those circumstances, the authorities found the petitioner to be an encroacher within the meaning of the provisions of Section 83(1) of the Act 30/87.

No case is made out requiring any interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition fails and shall accordingly stand dismissed without costs.

---------- B.SUDERSHAN REDDY, J

29th July,2004.

Ks/stp

Sd/-

ASSITANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 **The Addl.Commissioner Endowments Dept**
A.P.Tilak Road Hyderabad.
2 **The Deputy Commissioner Endowments Dept**
Guntur.
3 **The Asst.Commissioner Endowments Dept**
Nellore.
4.. 2CCs to G.P. for Endowments

5.. 2CD copies

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

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29th July,2004.